

HOUSE BILL NO. 774

INTRODUCED BY HIMMELBERGER, R. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A ONE-TIME INCOME TAX REBATE PROGRAM; PROVIDING FOR THE ADMINISTRATION OF THE TAX REBATES; TRANSFERRING MONEY FROM THE GENERAL FUND FOR THE PURPOSES OF THE TAX REBATES; APPROPRIATING MONEY FOR THE TAX REBATES AND FOR THE ADMINISTRATION OF THE REBATES; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. One-time income tax rebate program -- process -- requirements -- limitations -- appropriations. (1) There is a one-time income tax rebate program as provided in this section.

(2) The amount available for refund under this section is \$39.3 million.

(3) The amount under subsection (2) to be available for refund must be refunded on a pro rata basis to each taxpayer who filed a state income tax return, pursuant to 15-30-103, for tax year 2004.

(4) For the purposes of this section:

(a) the term "taxpayer" does not include a fiduciary or a beneficiary of an estate or trust who was required to file an income tax return pursuant to 15-30-135 unless a 2004 return was filed on behalf of a decedent;

(b) a return filed using the filing status married filing jointly is considered to have been filed by a single taxpayer; and

(c) the 2004 tax year is the 12-month period beginning January 1, 2004, and ending December 31, 2004, except that for fiscal year taxpayers, the 2004 tax year is a 12-month period ending between January 1, 2004, and December 31, 2004.

(5) (a) The pro rata distribution of the amount available for refund must be calculated by the department by dividing the amount available for refund under subsection (2) by the total individual income tax liability as determined by the department from all 2004 tax year returns that were filed by October 15, 2005.

(b) The percentage determined in subsection (5)(a), adjusted to take into account the limitations contained in subsection (7), must be used as the adjusted percentage multiplier in subsection (5)(c) to determine

1 the amount of each taxpayer's refund. The department may not revise the adjusted percentage multiplier.

2 (c) The department shall calculate the amount of each taxpayer's refund by multiplying the amount of
3 tax shown on the taxpayer's return on line 43 of the 2004 Montana Individual Income Tax Return, Form 2, or line
4 26 of the 2004 Montana Individual Income Tax Return, Short Form 2S, depending on the form used by the
5 taxpayer for tax year 2004, by the adjusted percentage multiplier determined in subsection (5)(b).

6 (6) (a) The department shall calculate the amount of each taxpayer's refund based on the taxpayer's
7 2004 tax year return on file with the department by October 15, 2005. A taxpayer ~~filing a delinquent~~ WHO HAS
8 NOT FILED A return OR PAID THE TAX for the 2004 tax year ~~after~~ ON OR BEFORE October 15, 2005, is not eligible for
9 a refund under this section.

10 (b) (i) If a taxpayer files an amended return or if the department reviews a taxpayer's return and
11 recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer under this
12 section.

13 (ii) If the department's recalculation determines that the taxpayer has an increased tax liability for tax
14 year 2004 and should receive an additional refund under this section as a result of the increased 2004 liability,
15 the department shall credit the additional amount of refund under this section to the amount of additional tax due
16 from the taxpayer.

17 (iii) If the amount of the recalculated refund due to the taxpayer exceeds the amount of additional tax
18 due from the taxpayer, the department shall pay the excess amount to the taxpayer, but only if the amount of
19 the refund exceeds \$50.

20 (iv) If, as the result of the taxpayer filing an amended return or of a review by the department, a
21 taxpayer's original 2004 tax liability is decreased, any overpayment of the refund calculated by the department
22 based on the original tax liability must be credited against any refund due to the taxpayer.

23 (7) A refund paid to a taxpayer pursuant to this section may not exceed \$500. The department may not
24 issue a refund under this section if the amount of the refund is \$50 or less.

25 (8) Beginning in November 2005, the department shall calculate and issue refunds due to taxpayers
26 under this section.

27 (9) (a) Notwithstanding the provisions of 15-1-211, any objection concerning the determination of the
28 amount of refund or any other issue relating to the refund provided in this section must be raised by the taxpayer
29 with the department no later than 30 days after the refund is mailed to the taxpayer.

30 (b) A district court has no jurisdiction to entertain or consider any issue relating to the determination or

1 payment of a refund made under this section unless the issue was first presented to the department and the
2 taxpayer exhausted all administrative remedies.

3 (10) (a) The amount available for refund under subsection (2) for the one-time tax refund program is
4 statutorily appropriated, as provided in 17-7-502, from the account in the state special revenue fund, as provided
5 in [section 3], to the department.

6 (b) Additional funds required to do any subsequently required acts necessary under this section,
7 including the filing of amended returns or the audit of adjusted returns, is statutorily appropriated, as provided
8 in 17-7-502, from the general fund to the department.

9
10 **Section 2.** Section 17-7-502, MCA, is amended to read:

11 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
12 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without
13 the need for a biennial legislative appropriation or budget amendment.

14 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
15 of the following provisions:

16 (a) The law containing the statutory authority must be listed in subsection (3).

17 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
18 appropriation is made as provided in this section.

19 (3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105;
20 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; [section
21 1]; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212;
22 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512;
23 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409;
24 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102;
25 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214;
26 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and
27 90-9-306.

28 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
29 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
30 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana

to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

NEW SECTION. **Section 3. Appropriation -- general fund transfer.** (1) There is appropriated \$400,000 from the general fund to the department of revenue for ~~fiscal year 2005~~ THE 2007 BIENNIUM to administer the provisions of [this act].

~~(2) Notwithstanding the provisions of 17-7-302 through 17-7-304, any unexpended amount of appropriation described in subsection (1) is reappropriated to the department of revenue as a biennial appropriation for fiscal years 2006 and 2007.~~

~~(3)(2)~~ On [the effective date of this section], there must be transferred from the general fund to an account in the state special revenue fund an amount equal to \$39.3 million for the purposes of paying the tax refunds pursuant to [section 1].

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 1].

NEW SECTION. **Section 5. Effective dates.** (1) [Sections 1, ~~and 2,~~ AND 3(1)] are effective July 1, 2005.

(2) [Sections 3(2), 4, and 6 and this section] are effective on passage and approval.

NEW SECTION. **Section 6. Termination.** [This act] terminates July 1, 2011.

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